

duties of administration and enforcement. The interpretations of the Assistant Secretary contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Assistant Secretary with respect to the meaning of the terms "labor organization" and "labor organization \* \* \* in an industry affecting commerce," as used in the Act, are set forth in this part to provide those affected by the provisions of the Act with "a practical guide \* \* \* as to how the office representing the public interest in its enforcement will seek to apply it."<sup>4</sup>

(d) To the extent that prior opinions and interpretations relating to the meaning of "labor organization" and "labor organization \* \* \* in an industry affecting commerce" are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

[28 FR 14388, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

#### § 451.2 General.

A "labor organization" under the Act must qualify under section 3(i). It must also be engaged in an industry affecting commerce. In accordance with the broad language used and the manifest congressional intent, the language will be construed broadly to include all labor organizations of any kind other than those clearly shown to be outside the scope of the Act.

#### § 451.3 Requirements of section 3(i).

(a) *Organizations which deal with employers.* (1) The term "labor organization" includes "any organization of

any kind, any agency, or employee representation committee, group, association, or plan \* \* \* in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, \* \* \*." The quoted language is deemed sufficiently broad to encompass any labor organization irrespective of size or formal attributes. While it is necessary for employees to participate therein, such participating employees need not necessarily be the employees of the employer with whom the organization deals. In determining who are "employees" for purposes of this provision, resort must be had to the broad definition of "employee" contained in section 3(f) of the Act.<sup>5</sup> It will be noted that the term includes employees whose work has ceased for certain specified reasons, including any current labor dispute.

(2) To come within the quoted language in section 3(i) the organization must exist for the purpose, in whole or in part, of dealing with employers concerning grievances, etc. In determining whether a given organization exists wholly or partially for such purpose, consideration will be given not only to formal documents, such as its constitution or bylaws, but the actual functions and practices of the organization as well. Thus, employee committees which regularly meet with management to discuss problems of mutual interest and handle grievances are "labor organizations", even though they have no formal organizational structure.<sup>6</sup>

(3) Since the types of labor organizations described in subparagraph (2) of this paragraph are those which deal

<sup>5</sup>Sec. 3(f) reads: "'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act."

<sup>6</sup>*National Labor Relations Board v. Cabot Carbon Co.*, 360 U.S. 203.

<sup>4</sup>*Skidmore v. Swift & Co.*, 323 U.S. 134, 138.

with employers, it is necessary to consider the definition of “employer” contained in section 3(e) of the Act in determining the scope of the language under consideration.<sup>7</sup> The term “employer” is broadly defined to include “any employer or any group or association of employers engaged in an industry affecting commerce” which is “an employer within the meaning of any law of the United States relating to the employment of any employees \* \* \*.” Such laws would include, among others, the Railway Labor Act, as amended, the Fair Labor Standards Act, as amended, the Labor Management Relations Act, as amended, and the Internal Revenue Code. The fact that employers may be excluded from the application of any of the foregoing acts would not preclude their qualification as employers for purposes of this Act. For example, employers of agricultural labor who are excluded from the application of the Labor Management Relations Act, as amended, would appear to be employers within the meaning of this Act.

(4) In defining “employer,” section 3(e) expressly excludes the “United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.” The term “political subdivision” includes, among others, counties and municipal governments. A labor organization composed entirely of employees of the governmental entities excluded by section 3(e) would not be a labor organization for the purposes of the Act with the exception of a labor organization com-

posed of employees of the United States Postal Service which is subject to the Act by virtue of the Postal Reorganization Act of 1970. (Organizations composed of Federal government employees that meet the definition of “labor organization” in the Civil Service Reform Act or the Foreign Service Act are subject to the standards of conduct requirements of those Acts, 5 U.S.C. 7120 and 22 U.S.C. 4117, respectively. In addition, labor organizations subject to the Congressional Accountability Act of 1995 are subject to the standards of conduct provisions of the Civil Service Reform Act pursuant to 2 U.S.C. 1351(a)(1). The regulations implementing the standards of conduct requirements are contained in parts 457-459 of this title.) However, in the case of a national, international or intermediate labor organization composed both of government locals and non-government or mixed locals, the parent organization as well as its mixed and non-government locals would be “labor organizations” and subject to the Act. In such case, the locals which are composed entirely of government employees would not be subject to the Act, although elections in which they participate for national officers or delegates would be so subject.<sup>8</sup>

(b) *Organizations which may or may not deal with employers.* Regardless of whether it deals with employers concerning terms and conditions of employment and regardless of whether it is composed of employees, any conference, general committee, joint or system board, or joint council engaged in an industry affecting commerce and which is subordinate to a national or international labor organization is a “labor organization” for purposes of the Act. Included are the area conferences and the joint councils of the International Brotherhood of Teamsters and similar units of other national and international labor organizations.

[28 FR 14388, Dec. 27, 1963, as amended at 42 FR 59071, Nov. 15, 1977; 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997]

<sup>7</sup>Sec. 3(e) reads: “‘Employer’ means any employer or any group or association of employers engaged in an industry affecting commerce, (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.”

<sup>8</sup>See also, § 452.12 of this chapter which discusses the election provisions of the Act.